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JUN 28 2005

In re Application of
Hojabri
Application No. 09/698,739
Filed: October 27, 2000
Attorney Docket No. PO4329-P01

OFFICE OF PETITIONS

DECISION GRANTING PETITION

This decision is in response to Applicant's "PETITION TO CORRECT PATENT TERM ADJUSTMENT" timely¹ filed on December 22, 2004 requesting that the Office adjust the PTA determination at the time of the mailing of the Notice of Allowance from 511 days to 685 days.

Applicant's petition to correct PTA is **GRANTED**. The Office will adjust the PTA at the time of the mailing of the notice of allowance to reflect six hundred and eighty-five (685) days. The Office will provide a copy of the adjusted PTA determination with this decision.

Applicant argues that the Office failed to provide an administrative delay for the response to the filing of the RCE on January 13, 2004. Applicant argues that the Office improperly entered the date of resubmission by applicant of previously filed RCE rather than the actual date of the submission of the RCE. Applicant provided proof of an auto-response by the Office reflecting receipt of RCE at the USPTO on January 13, 2004. Accordingly, applicant argues that the USPTO needed to respond to the RCE by May 13, 2004 but did not do such until November 3, 2004.

Applicant arguments as well as calculations are persuasive. Applicant have submitted an auto response receipt reflecting that applicant did in fact respond to the mailed notice of allowance on January 13, 2004 rather than the date of July 22, 2004. Accordingly, the USPTO was late in replying to the RCE by a period of one hundred and seventy-four days (174).² See 37 CFR 1.702(a)(2). In addition, the Office had a delay of five hundred and eleven (511) days for failing to initially act upon the application within 14 months of the filing of the application. See 37 CFR 1.702(a)(1). Overall, the amount of PTA accrued at the time of the mailing of the notice of allowance is six hundred and eighty-five (685) days as suggested by applicants.

The applicant has submitted the \$200.00 application fee required for this "petition." Accordingly no additional fees are required.

¹ Issue filed on January 11, 2005.

²The RCE was submitted on January 13, 2004 and should have been responded to by May 13, 2004. However, the Office did not respond until November 3, 2004. Accordingly, the administrative delay began on May 14, 2004 and ended on November 3, 2004.

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After the mailing of this decision, the Office will forward the application to the Office of Patent Publications for a prompt issuance of the patent. Any delays in issuance of the application will be reflected in the issue notification letter that is mailed to applicant approximately three weeks prior to issuance of the application.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration at 571-272-7757.

Kery Fries
Karin Ferriter *frc*
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Copy of Adjusted Pair Calculation